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EXAMINER
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte WILLIAM H. RADKE

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Appeal 2016-003128
Application 14/148,019
Technology Center 2100

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Before ERIC S. FRAHM, CATHERINE SHIANG, and
SCOTT E. BAIN, *Administrative Patent Judges.*

SHIANG, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's
rejection of claims 1–20, which are all the claims pending and rejected in the
application. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

STATEMENT OF THE CASE

Introduction

According to the Specification, the present invention relates to
integrated circuits. *See generally* Spec. 1. Claim 1 is exemplary:

       1. A memory device, comprising:

       an array of memory cells arranged in a plurality of sectors, wherein the array of memory cells is further arranged in a plurality of ECC coverage areas; and

       control circuitry, wherein the control circuitry is configured to adjust a size of one or more of the ECC coverage areas.

Reference and Rejection[1]

Claims 1-20 are rejected under 35 U.S.C. § 102(e) as being anticipated by Egner (US 8,402,325 B2; Mar. 19, 2013).

ANALYSIS

Anticipation

We have reviewed the Examiner's rejection in light of Appellant's contentions and the evidence of record. We concur with Appellant's contention that the Examiner erred in finding Egner discloses "control circuitry, wherein the control circuitry is configured to adjust a size of one or more of the ECC [error correcting code] coverage areas," as recited in independent claim 1. *See* App. Br. 15–20; Reply Br. 2–6.

The Examiner initially cites Egner's input/encoder 10 and error rate assessment 12 of Figure 1, and column 4, lines 20–25 and column 5, lines 50–60 for disclosing the disputed claim limitation. *See* Final Act. 5. Appellant argues, and we agree, the cited Egner portions do not disclose the disputed claim limitation. *See* App. Br. 15–20.

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[1] The Examiner withdrew a non-statutory double patenting rejection. Ans. 2.

In response to Appellant's arguments, the Examiner cites excerpts from Egner's columns 3–5 (Ans. 3–4), and finds "Egner teaches several embodiments for dynamically selecting (i.e. adjusting) an ECC for encoding data prior to storage in a memory device." Ans. 3.

We agree with Appellant that the Examiner has not shown Egner's disclosure of selecting an ECC constitutes "adjust[ing] a size of one or more of the ECC coverage areas," as required by claim 1. *See* Reply Br. 2–3. Both the Specification and Egner define ECC as "error correction code." Spec. ¶ 5, Egner 1:12. In contrast, the Specification defines the claimed "ECC coverage area" as "the data coverage area of the ECC codes"—not merely ECC. Spec. 4; *see* Reply Br. 3. Further, the Examiner has not provided any reasoning or evidence to show Egner's teaching of selecting an ECC necessarily discloses "adjust[ing] a size of one or more of the ECC coverage areas." *See In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1349 (Fed. Cir. 2002) (Inherency can only be established when "prior art necessarily functions in accordance with, or includes, the claimed limitations.") (citations omitted).[2]

Because the Examiner fails to provide sufficient evidence or explanation to support the anticipation rejection, we are constrained by the record to reverse the Examiner's rejection of claim 1.

Each of independent claim 17 and 18 recites a claim limitation that is substantively similar to the disputed limitation of claim 1. *See* claims 17 and

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[2] Because a rejection under 35 U.S.C. §103 is not before us, we express no opinion as to whether claim 1 would have been obvious over Egner alone, or in combination with additional references. We leave any such further consideration to the Examiner.

18. Therefore, for similar reasons, we reverse the Examiner's rejection of independent claims 17 and 18.

We also reverse the Examiner's rejection of dependent claims 2–16, 19, and 20, which depend from claims 1 and 18.

DECISION

We reverse the Examiner's decision rejecting claims 1–20.

REVERSED